

U.S. District Court
Eastern District of Virginia
Newport News Division

Jones, Blechman, Woltz & Kelly, P.C.
Plaintiff

v.

Civil No. 4:08-cv-00123

Nikolai I. Sinkine,
Defendant
Tatyana A. Babakaeva,
Defendant

BRIEF IN OPPOSITION OF REMOVAL

Statement of the Facts

1. On December 17, 2008, Tatyana A. Babakaeva (hereinafter "Babakaeva") filed a Notice of Removal in this Court.
2. Babakaeva filed the Notice of Removal based on certain court actions that occurred in the Circuit Court for the City of Newport News, Virginia.
3. Namely, Jones Blechman, Woltz & Kelly, P.C. (hereinafter "Plaintiff") filed a Complaint For Pretrial Attachment on June 23, 2008.
4. That the Plaintiff sought damages against Nikolai I. Sinkine (hereinafter "Sinkine") for the principal amount of \$31,408.88 for services the Plaintiff allegedly provided Sinkine.
5. Plaintiff prayed that the proceeds from the sale of some real property that totaled \$92,291.07 and was held in escrow by the Law Offices of Wilson & Wilson, P.C. (hereinafter "Wilson & Wilson") be attached to secure the amount prayed for.
6. On August 6, 2008 Babakaeva filed a Motion to Intervene and on November 17, 2008, the Circuit Court for Newport News entered an order making Babakaeva a party defendant.

Argument and Grounds for Relief

Babakaeva filed her Notice of Removal claiming the facts of the matter met the requirements of 28 U.S.C. Sect. 1332. Babakaeva asserted that the amount in controversy exceeds \$75,000.00. She

also claimed that the Plaintiff is a citizen of Virginia and she is a subject of the Republic of Uzbekistan. The Plaintiff agrees that it is a citizen of Virginia. The Plaintiff, however, asserts that Babakaeva is obligated to prove that she is a subject of a foreign state. More importantly, the Plaintiff respectfully asserts that this Court does not have jurisdiction over this matter because the amount in controversy is only \$31,408.88, exclusive of interest and costs. While it is the case that Wilson & Wilson is holding an amount of funds in excess of \$75,000.00, that fact does not place the entirety of the funds in controversy. Even if the state court ruled fully in favor of the Plaintiff regarding the amount of money Sinkine owes the Plaintiff, the Plaintiff could only receive the principal of \$31,408.88. The Plaintiff asserts no interests in any other funds held by Wilson & Wilson. Therefore, the principal amount of \$31,408.88 is clearly the maximum amount that is in controversy.

Conclusion

Unquestionably, the amount in controversy is for the maximum principal amount of \$31,408.88. That Wilson & Wilson is holding an amount of funds of \$92,291.07 does not place same in controversy. Babakaeva has confused the distinction between not having access of a certain amount of funds (\$92,291.07) with a claim of title to another amount of funds (\$31,408.88) that is actually in controversy. \$31,408.88 is the amount of controversy, exclusive of interest and costs.

Wherefore, the Plaintiff prays that this Court rule in its favor and remand this case to the Circuit Court for the City of Newport News, and for any other relief this Court deems proper and just.

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February, 2009 I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

And I hereby certify that I will mail the document by U. S. mail to the following non-filing users:

Nikolai I. Sinkine
28 Kincaid Lane
Hampton, VA 23666
Defendant

Tatyana A. Babakaeva
2124 Criston Drive
Newport News, VA 23602
Defendant

_____/s/_____
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